

Memo

To: Debi LucasSwitzer, Chief Administrative Officer
And To: Council of The Township of South Stormont
From: William R. Hunter, Integrity Commissioner
Date: December 19, 2018
Re: Alleged Breaches by a Councillor of Code of Conduct - By-Law 2018-050

OVERVIEW

This is the report of the Integrity Commissioner appointed by the Township of South Stormont ("the Township") concerning a complaint made about the conduct of a Councillor of the Township's Council ("the Councillor") on June 30, 2018.

The complaint is that the Councillor made certain inappropriate verbal comments to an employee of the Township ("the Employee") in a public place which were in breach of the Township's Code of Conduct.

There are criteria stipulated in the *Municipal Act, 2001* as to the Integrity Commissioner's duties. The role of the Integrity Commissioner is to determine whether or not there is sufficient information or evidence to support and substantiate the allegations made in the complaint. That determination is made on an evidentiary standard of the "balance of probabilities", that is, whether it is more likely than not that the complaint in each scenario is contrary to the provisions of the Code of Conduct, the *Municipal Act, 2001*, and/or other applicable legislation. In order to ensure fair and credible process, the Integrity Commissioner must also:

1. Act as an impartial, unbiased third party;
2. Maintain the integrity and confidentiality of the process, to the extent possible;
3. Interview the complainant, the respondents, and the primary witnesses;
4. Collect and review the evidence;
5. Assess the issue of credibility;
6. Determine whether further witnesses should be interviewed;
7. Determine whether additional evidence or interviews are required;
8. Transmit the final report to the complainant and to the municipality setting out the findings and conclusions with respect to the allegations.

MUNICIPAL CODE OF CONDUCT

The Township of South Stormont adopted a Code of Conduct pursuant to the *Municipal Act, 2001*, by By-law 2018-050 duly passed June 27, 2018.

Pursuant to By-law 2018-050, the Code of Conduct applies to and binds all Members of Municipal Council.

RELEVANT PARTS OF THE CODE OF CONDUCT AND ANY OTHER APPLICABLE LEGISLATION

The Township's Code of Conduct sets a minimum standard for the behaviour of Council members in carrying out their functions. It has been developed to assist Council to:

- a) Understand the standards of conduct that are expected of them and the law that applies in relation to these standards;
- b) Fulfill their duty to act honestly and exercise reasonable care and diligence;
- c) Act in a way that enhances public confidence in local government; and
- d) Identify and resolve situations which might involve a conflict of interest or a potential misuse of position and authority.

Section C (4) of the Code of Conduct requires that Members of Council refrain from behaviour that:

- i) contravenes Federal or Provincial law, Municipal by-laws, or the Municipality's Code of Conduct;
- ii) is an abuse of power;
- iii) discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others; or
- iv) prejudices the provision of a service or services to the community.

(emphasis added)

Section D states:

4. Release of Information to Public and Media, including Social Media. Members of Council acknowledge that official information related to decisions and resolutions made by Council will normally be communicated to the community and the media by the Council as a whole or the Mayor as Head of Council or by those so designated.

5. Reputation Management.

A member of Council shall not initiate or participate in any action of falsehood, slander or defamation of character nor the spreading of any rumour about an elected official, an appointed official and any member of staff of the Township. (emphasis added)

Section G (3) states:

No member of Council shall harass another member of Council, staff or an appointed committee member because of . . . record of offences

Section G (4) states in part:

Members of Council shall not:

- i) maliciously or falsely injure the professional or ethical reputation of staff.

DUTY OF CONFIDENTIALITY

In accordance with Section 223.5(1), the Integrity Commissioner and every person acting under the instruction of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this part.

Section 223.5(1)(3) further provides that this section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

I have identified the above-noted sections of the *Municipal Act, 2001*, by way of explanation as to the Integrity Commissioner's obligation to preserve secrecy and to provide an understanding as to why the name of the member of council and any witnesses interviewed during the course of the investigation are not identified.

I have spoken to various persons having information, including but not limited to the Councillor and the Employee. In addition, I have reviewed various notes from closed sessions meetings of the Council.

Before preparing the report, the complaint must be understood, the surrounding facts must be investigated and the relevant parts of the Code of Conduct and any other applicable legislation must be considered in relation to the facts.

COMPLAINT

On September 26, 2018, the Employee's union became aware of a situation involving the Employee and the Councillor. The union made a complaint on the Employee's behalf dated October 31, 2018. The complaint alleged that the Councillor approached the Employee in a local restaurant on June 30, 2018 and had an inappropriate conversation. In an interview with the Employee, I was informed that the Councillor, in a loud voice that could be overheard by others present, and referring to an embarrassing matter in the Employee's past, said, "If it wasn't for me, you would not have got your job back".

In speaking with the Employee, he made me aware of another incident in September 2018 when the Employee was outside his residence and the Councillor happened by. The Employee said that the Councillor told him details of the tail-end of a telephone conversation

that the Councillor had overheard with the then Mayor of the Township, the CAO and the Clerk wherein the Mayor made disparaging remarks about the Councillor. The Councillor told the Employee that he may sue the Mayor. The Employee told me that he did not want to hear this from the Councillor and was again embarrassed. There was no formal complaint made respecting this incident.

SURROUNDING FACTS

Both the Employee and the Councillor agree on the basic facts of the June 30, 2018 encounter. The Employee stated that the Councillor came into Jimmy's restaurant and remained at his and his fiancée's table for about an hour. The Councillor did not dispute this but could not remember how long he sat with them. The Employee stated to me that he felt very embarrassed and ate as fast as he could so that he and his fiancée could leave as soon as possible. The Councillor stated that he did not notice any embarrassment or uncomfortable behaviour.

The Councillor denies stating the words attributed to him by the Employee. He did say that he cannot recall exactly what he said at Jimmy's but it was something like, "You wouldn't have to worry about losing your job due to the DUI". The Councillor could not explain why he said anything on this topic to the Employee.

The Employee's problem had long since been resolved between himself and the Township before the June 30, 2018 meeting at Jimmy's restaurant.

To his credit, when the Councillor was made aware of the situation, he immediately apologized to the Employee in writing.

I was concerned that perhaps the Councillor had given information to the Employee that was discussed by Council in a closed session Council meeting. Information obtained by a review of the closed session minutes and information from staff who attended the closed sessions, was that Council received legal advice respecting the situation, which advice it followed. There was no discussion of terminating the Employee. By June 30, 2018, the Employee was already aware of this, having been appropriately informed by a Township officer of the council's position.

The rumour mill had it that there was an argument and possibly a fist fight at the restaurant. Both the Employee and the Councillor deny these allegations.

With respect to the September 2018 meeting, both agree that the Employee was outside on his property. The Councillor stated that the Employee was erecting the Councillor's re-election sign on his property. The Councillor stated that he stopped to advise the Employee that it was not proper to erect an election sign on his property. The Councillor stated then

that he and the Employee had a general conversation about a variety of matters but does admit that he said the things to the Employee about the overheard telephone call as stated above.

THE ISSUE

“Harassment” is referred to several times in the Code of Conduct but is not defined. The Code of Conduct allows consideration of Provincial law. Thus, I refer to the definition of “workplace harassment” contained in the *Occupational Health and Safety Act* which states:

“workplace harassment” means,
(a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

I do recognize that the Councillor’s statements were not made in the “workplace” but applying the concept of harassment to this situation, the question is whether the Councillor’s statements with the Employee were vexatious and were known or ought reasonably to be known to be unwelcome?

ANALYSIS

I have referred to two separate instances of the Councillor speaking with the Employee. However, only one, being the meeting at Jimmy’s restaurant, is the subject of a complaint. Therefore, I do not recommend referring to the September 2018 as a separate complaint. Rather, I will refer to it when I consider the overall conduct of the Councillor and the Jimmy’s restaurant complaint.

Based upon the evidence, I find that the Councillor said some words to the Employee in a public place and in a loud voice, which words were overheard and were repeated in some version by others to the embarrassment of the Employee. I find that this was a breach of sections C 4 (iii), D 5, G 3 and G 4 of the Code of Conduct.

Councillors must be aware of the precepts contained in the Code of Conduct for the Township of South Stormont with respect to the treatment of employees and discussions with employees about personal matters whether in private or public. The Councillor must be aware of the difference between the roles of an employee and a councillor. Section 224ⁱ of the *Municipal Act, 2001* sets out the guidelines for council’s role and section 227ⁱⁱ sets out the role of officers and employees.

Employees can easily be intimidated by the power imbalance between an employee and a councillor. Breaches of the Code of Conduct affect the relationship between employees and councillors and may impede the ability of the employee to function to his/her best ability.

In making my recommendations, I gave considerable weight to the Councillor's immediate apology to the Employee as this demonstrated an awareness of the sensitivity of the situation. However, considering the Councillor's September 2018 conversation with the Employee, I have a concern that the Councillor does not understand and appreciate the responsibilities and requirements of his position as councillor, as they relate to interaction with employees, staff and officers.

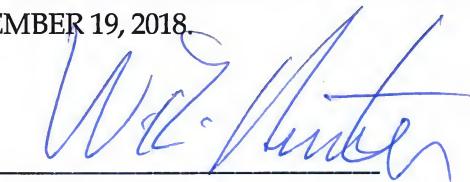
RECOMMENDATIONS

I tender this investigation to the Council of the Township of South Stormont for their consideration and acceptance of the following recommendations:

The Office of the Integrity Commissioner respectfully recommends the following:

- 1) That Council impose the following sanctions arising from the findings set out in this report:
 - a) That Council reprimand the said Councillor and review with him his responsibilities pursuant to the Code of Conduct and his responsibilities in interacting with employees, staff and officers of the Township.
 - b) That the Councillor be provided with a copy of this report and that the Councillor reviews the Code of Conduct in light of the findings of this report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY WILLIM R. HUNTER ON
DECEMBER 19, 2018.



William R. Hunter

ⁱ 224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

ⁱⁱ 227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.